



## State of Utah

JON M. HUNTSMAN, JR.  
*Governor*

GARY HERBERT  
*Lieutenant Governor*

## Department of Administrative Services

KIMBERLY K. HOOD  
*Executive Director*

## Division of Risk Management

ROGER LIVINGSTON  
*Director*

# MEMORANDUM

TO: To Whom It May Concern

FROM: Division of Risk Management

DATE: January 28, 2008

RE: Builders Risk Policy

Builders Risk coverage for state agency, state college, university and school district construction projects is provided as follows:

1. The first \$50,000 is covered by the Utah Division of Risk Management.
2. Coverage above \$50,000 is provided through commercial insurance carriers.

Attached is a copy of portions of Risk Management's policy and a copy of the first layer commercial policy which details coverage.



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## Division of Risk Management

ROGER LIVINGSTON  
*Director*

### MEMORANDUM

TO: Whom It May Concern

FROM: Division of Risk Management

DATE: February 1, 2008

RE: Builders' Risk Policy

Builders' Risk coverage for state agency, state college, university and Utah school district construction projects is provided as follows. Please note, this is a summary of the Builders Risk policy provided for general guidance, the actual terms of the policy apply to decide all questions that may arise. The pertinent policy provisions are attached.

Risk Management provides Course of Construction Insurance (Builder's Risk) when a contract with a contractor requires that the state provide such a policy. Risk Management carries the first \$50,000 and excess policies provides additional coverage. Coverage is automatic up to \$50 million. Construction projects over \$50 million must be reported as soon as possible, and in any event within 90 days. The policy covers:

- (1) new construction, alterations, repairs and additions to existing buildings where the contracts specify that the named insured's shall maintain insurance to protect the interest of the contractors or subcontractors;
- (2) is written on a all risk basis;
- (3) is triggered at the start of construction and continues throughout the course of construction;
- (4) has a \$1,000 deductible per occurrence or such greater amount indicated in any contract between the insured and a contractor or loss payee;
- (5) and allows waiver of subrogation before loss has occurred.

Some of the notable exceptions to coverage are cost of making good faulty or defective workmanship, material, construction or design; infidelity of the insured's employees; contractor's equipment of every description.

## ENDORSEMENT B - BROADENING CONDITIONS

Coverage shall be as provided under this policy except as follows:

A. If any loss exceeds the per occurrence deductible under policy number EAF 700304-06 issued by the Axis Specialty Insurance Company, Lexington Insurance policy number 8755222 and RSUI Indemnity policy number NHD347771 and any higher layer or replacement policies issued to the State of Utah and State of Utah School Districts, coverage for that portion of any loss in excess of such deductible shall be as provided under such policies in any respect which is more beneficial to the insured than under the provisions of this policy.

B. If, because of losses, the cumulative loss deductible under policy number EAF 700304-06 issued by the Axis Specialty Insurance Company, Lexington Insurance policy number 8755222 and RSUI Indemnity policy number NHD347771 and any higher layer or replacement policies issued to the State of Utah and State of Utah School Districts is exhausted, coverage for that portion of any loss in excess of such deductible shall be as provided under such policies in any respect which is more beneficial to the insured than under the provisions of this policy.

C. Coverage for course of construction losses shall be as provided under policy number EAF 700304-06 issued by the Axis Specialty Insurance Company, Lexington Insurance policy number 8755222 and RSUI Indemnity policy number NHD347771 and any higher layer or replacement policies issued to the State of Utah and State of Utah School Districts, except that a per occurrence deductible of \$1,000 shall apply with respect to the insured. The per occurrence deductible as respects any contractor of the insured or loss payee shall be the greater of \$1,000 or the deductible indicated in any contract between the insured and such contractor or loss payee. Coverage under this policy is only for the amount between the \$1,000 or higher deductible hereunder and the higher deductible under the policy referenced above or any replacement policies.

D. Coverage for earthquake and flood shall be as provided under policy number EAF 700304-06 issued by the Axis Specialty Insurance Company, Lexington Insurance policy number 8755222 and RSUI Indemnity policy number NHD347771 and any higher layer or replacement policies issued to the State of Utah and State of Utah School Districts, except that a per loss deductible of \$1,000 shall apply per location. Any changes in the provisions of the above referenced policies or any replacement policies automatically amend this coverage in like manner. Coverage under this policy is only for the amount between the \$1,000 deductible hereunder and the higher deductible under the policies referenced above or any replacement policies.

E. Coverage for terrorism shall be as provided under policy number EAF 700304-06 issued by the Axis Specialty Insurance Company, Lexington Insurance policy number 8755222 and RSUI Indemnity policy number NHD347771 and any higher layer or replacement policies issued to the State of Utah and State of Utah School Districts, except that a per loss deductible of \$1,000 shall apply per location. Any changes in the provisions of the above referenced policies or any replacement policies automatically amend this coverage in like manner. Coverage under this policy is only for the amount between the \$1,000 deductible hereunder and the higher deductible under the policies referenced above or any replacement policies.

F. Coverage for fungus, wet rot, dry rot and bacteria shall be as provided under policy number EAF 700304-06 issued by the Axis Specialty Insurance Company, Lexington Insurance policy number 8755222 and RSUI Indemnity policy number NHD347771 and any higher layer or replacement policies issued to the State of Utah and State of Utah School Districts, except that a per loss deductible of \$1,000 shall apply per location. Any changes in the provisions of the above referenced policies or any replacement policies automatically amend this coverage in like manner. Coverage under this policy is only for the amount between the \$1,000 deductible hereunder and the higher deductible under the policies referenced above or any replacement policies.

G. Some coverages such as earthquake and flood are subject to aggregate limits applying to all entities covered by the fund. In the event any loss occurrence or group of loss occurrences exceeds an available aggregate limit, each covered entity will be paid a pro-rata share of an available aggregate limit equaling the percentage that its losses subject to such aggregate limit during an aggregate period are of total losses subject to such aggregate limit of all entities covered by the fund during the aggregate period.

H. Upon thirty days prior written notice by the fund to the insured, coverage under D above for earthquake and/or flood shall not apply for any property determined by the fund to be an unusually high risk exposure because of location, unusual materials or construction, or other underwriting reason.

(7-07)

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**1. NAMED INSURED**

The following as is now or hereafter constituted:                      Refer to Endorsement No. 1

In the event that any of the above Named Insured's shall enter into a contract or contracts for new buildings, structures, or construction projects, or for alteration or repair of, or addition to existing buildings, structures, or improvements, and where the contracts specify that any of the above Named Insured's shall maintain insurance to protect the interests of the contractors or subcontractors, or sub-subcontractors, this insurance shall extend to cover such interest of the contractors and subcontractors and sub-subcontractors as additional Named Insured's, subject to all the conditions of this policy, and without notice being given to the Company.

**2. PROPERTY COVERED**

Except as otherwise specifically excluded herein, this policy covers all property of an insurable nature including money and securities, valuable papers, automobiles, mobile equipment and property in course of construction, reconstruction or repair now existing or hereafter acquired, owned by the Insured, or property in the care, custody or control of the Insured for which the Insured is legally liable, or for which the Insured has assumed liability prior to the loss, wherever situated. Personal property of the Insured including materials and supplies to be used in a part of, or incidental to construction, reconstruction or repair are covered wherever situated worldwide.

**3. PERILS INSURED AGAINST**

This policy insures against all risk of physical loss or damage occurring during the period of this policy to the insured property from any cause, including the expense of removal of debris of insured property damaged by an insured peril, and all costs, fees and other expenses incurred by the Insured in establishing the existence of or the amount of loss covered under this policy, not exceeding 10% of the loss, except as hereinafter excluded. Physical loss or damage shall include loss or damage as a result of unauthorized use of telephone services.

**4. DEMOLITION COST**

This policy applies to the cost of demolishing any undamaged portion of the building(s) covered under this policy including the cost of clearing the site thereof, caused by loss from any peril insured against under this policy and resulting from enforcement of any state or municipal law or ordinance regulating the construction or repair of buildings and in force at the time of loss which necessitates such demolition. Such demolition of the undamaged portion shall be treated as a loss caused by the perils which caused the original loss. This coverage is extended to cover "Increased Cost" (as defined in Section 7 [1]) and/or cost of restoring "Land Improvements" (as provided in Section 26 A [1]).

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**5. AUTOMATIC ACQUISITION**

As respects newly acquired property, it is agreed that this coverage is extended to include newly acquired property subject to the policy conditions including the limits of liability as respects real and personal property as described in the policy form. It is further agreed that this sub limit is not in addition to, nor an extension of any other limits of liability under this policy. Newly acquired property (including newly started Course of Construction projects) over \$50,000,000 must be reported to the Company within (90) days.

**6. PERILS EXCLUDED**

This policy does not insure against loss caused by the following perils:

- A. Loss due to electrical or magnetic injury, disturbance or erasure of electronic recordings except by lightning.
- B. Mysterious disappearance, loss, the proof of which is dependent upon an inventory computation of profit and loss computation.
- C. Infidelity or Dishonesty of the assured or any of his employees.
- D. Cost of making good faulty or defective workmanship, material, construction or design, but this exclusion shall not apply to damage resulting from such faulty or defective workmanship, material, construction or design.
- E. Delay, loss of market, gradual deterioration, inherent vice, moth, termites, vermin, ordinary wear and tear, contamination, dampness of atmosphere, extremes or changes of temperature, smog, shrinkage, evaporation, loss of weight, rust wet or dry rot, corrosion, change in flavor or color or texture or finish, disease or infection, but this exclusion shall not apply to resulting damage caused by a peril otherwise insured, nor shall this exclusion apply to data processing or telephone systems, including all related equipment or component parts with regard to the perils of: dampness or atmosphere, extremes or changes of temperature, evaporation or corrosion.
- F. Loss of normal settling, shrinkage, or expansion of foundations, walls, floors, or ceilings.
- G. Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote or be in whole or in part caused by, contributed to, or aggravated by the peril(s) insured against in this policy.
- H. Latent defect or mechanical breakdown of machinery or equipment, unless a loss ensues which is caused by a peril not otherwise excluded, and then the Company shall be liable only for such ensuing loss.

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- I. Explosion of steam boilers, steam pipes, steam turbines, or steam engines, other than explosion within a firebox or combustion chamber, if owned by, leased by, or operated under the control of the Insured.
- J. (1) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval, or air forces.
- (2) Any weapon of war employing atomic fission or radioactive force whether in time of peace or war.
- (3) Any action taken by governmental authority in seizure or destruction under quarantine or custom regulation, confiscation by order of any governmental authority, or risk of contraband or illegal transportation or trade.

Notwithstanding the above item (J), this insurance shall cover loss or damage directly caused by acts committed by agent of any government, party, or faction engaged in war, hostilities, or warlike operation, provided such agency is acting secretly and not in connection with any operation of armed forces (whether military, naval, or air forces) in the country where the property is situated. Nothing in the foregoing shall be construed to include any loss, damage, or expense caused by or resulting from any of the risks or perils excluded above excepting only the acts of certain agents expressly covered herein; but in no event shall this insurance include any loss, damage, or expense caused by or resulting from any weapon or war employing atomic fission or radioactive force whether in time of peace or war.

- K. Pertaining to animals held for sale, amusement, educational or experimental purposes: intentional death, death arising out of experiments conducted, or experimental procedures used by the Insured, death by natural causes, including diseases and infection, illness, suffocation, accidental death caused by drowning, stampede, normal movement on the Insured's premises or in vehicles owned by, leased to, or contracted by the Insured.
- L. Confiscation or requisition or destruction by public authority or any person or body having jurisdiction except as related to the peril of fire.
- M. Rain, snow or sleet with respect to personal property in the open, but this exclusion shall not apply to property in the custody of carriers for hire.
- N. Loss caused by failure of borrowers or renters of books and other valuable papers and records to return them to the Insured.
- O. Damage sustained due to and resulting from any repairing, restoration or retouching process of fine arts or objects that are unique or of historical value only.

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- P. Loss or damage occasioned by: breakage of art glass windows, statuary, marbles, glassware, bric-a-brac, porcelains, and similar fragile articles, unless caused by fire, lightning, aircraft, theft or attempted theft, cyclone, tornado, earthquake, explosion, malicious damage, or collision, derailment or overturn of conveyance, unless endorsed hereon.

**7. VALUATION**

In case of loss, the basis of adjustment shall be as follows:

The amount actually expended by or on behalf of the Insured to repair, rebuild, or replace, within a reasonable time, at the same or at another site, such property which has been damaged or destroyed by the peril(s) insured against in this policy, subject to the following conditions:

- (1) The Company's liability shall not exceed the cost to repair, rebuild, or replace, whichever is the smallest, including architect's fees and the increased cost resulting from the enforcement of and limited to the minimum requirements of any state or municipal law or ordinance regulating the construction of repair or damaged insured property, with new materials of like kind and quality. However, for fine arts or for objects that are unique or of historical value the Company's liability shall not exceed the cost to replace with similar material or objects of like kind and quality. The cost to replicate may be elected for buildings listed on the Utah Historical Register.
- (2) In the event the damaged or destroyed property is not repaired, rebuilt, or replaced, or the property at time of loss is obsolete, useless, or not maintained in workable condition, adjustment shall be on the basis of actual cash value.
- (3) Cost to replace shall include the cost of research or other expense necessary to replace or restore damaged or destroyed records, including but not limited to films or records pertaining to electronic data processing or electronically controlled equipment, including data thereon.

**8. IMPROVEMENTS AND BETTERMENTS**

Improvements and betterments in or to building(s) not owned by the Named Insured at any location

- A. The Term "improvements and betterments" wherever used in this policy is defined as fixtures, alterations, installations, or additions comprising a part of the described building and made of acquired at the expense of the Insured exclusive of rent paid by the Insured, but which are not legally subject to removal by the Insured.
- B. The word "lease" wherever used in this policy shall mean the lease or rental agreement, whether written or oral, in effect as of the time of loss.



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C. In the event improvements and betterments are damaged or destroyed during the term of this policy by the perils insured against, the liability of the Company shall be determined as follows:

- (1) If repaired or replaced at the expense of the Insured within a reasonable time after such loss, the replacement cost of the damaged or destroyed improvements and betterments.
- (2) If not repaired or replaced within a reasonable time after such loss, that proportion of the original cost at time of installation of the damaged or destroyed improvements and betterments which the unexpired term of the lease at the time of loss bears to the period(s) from the date(s) such improvements and betterments were made to the expiration date of the lease.
- (3) If repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

## 9. DEDUCTIBLE

In consideration of the reduced premium charged for this policy, it is agreed that:

Specific Loss Deductible:

The Company's obligation to make payment for loss shall apply only above \$1,000,000 in each occurrence.

Cumulative Loss Deductible:

The amount of each loss up to \$1,000,000 (Specific Loss Deductible), less a "maintenance" deductible of \$5,000 per occurrence except \$50,000 per occurrence with respect to flood\* and/or earthquake, will be applied to a \$3,500,000 Cumulative Loss Deductible annually commencing with the effective date of this policy.

It is further agreed that if such Cumulative Loss Deductible has been exhausted, the Company is liable only for the amount of each loss in excess of \$10,000 in each occurrence except flood\* and earthquake which shall be \$50,000 per occurrence. All losses that fall within the Cumulative Loss Deductible that exceed \$100,000 shall be reported to the Company. The Company shall have the right to monitor and adjust at its own expense all losses in excess of \$100,000.

The Company's obligation to make payment for loss shall apply only to the extent that the sum of the losses payable by it in the absence of this clause, less all recoveries and allowances for salvage or subrogation or any other means, exceeds an aggregate amount of \$3,500,000 (called the Cumulative Loss Deductible) in an annual period of this policy. The Company's liability shall be for such excess only, subject otherwise to the policy amount.

If the Company has paid losses within said Cumulative Loss Deductible amount, the Insured shall promptly reimburse the Company thereafter. All recoveries and

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allowances for salvage or subrogation or any other means for which no allowance is made to the Insured shall belong to the Company.

SUB-DEDUCTIBLE: \*Coverage on Flood is in excess of the National Flood Program, where applicable.

SUB-DEDUCTIBLE: \$50,000 per occurrence on all perils as respects any loss to covered property arising out of covered Course of Construction, regardless of whether such covered property is existing or new. The amounts on all perils falling within this \$50,000 shall not apply toward accumulation of the "Cumulative Loss Deductible" defined above.

#### 10. PER OCCURRENCE LIMIT OF LIABILITY

It is understood and agreed that the following special terms and conditions apply to this policy:

- A. The Limit of Liability or Amount of Insurance shown on the face of this policy, or endorsed onto this policy, is a limit or amount per occurrence as defined in Section 11 of this policy.
- B. The premium for this policy is based upon the Statement of Values on file with the Company, or attached to this policy. In the event of loss hereunder, liability of the Company shall be limited to the least of the following:
  - (1) The actual adjusted amount of loss, less applicable deductible(s).
  - (2) The Limit of Liability or Amount of Insurance shown on the face of this policy or endorsed onto this policy.

#### 11. LOSS OCCURRENCE DEFINED

- A. Except as hereinafter defined "loss occurrence" shall be understood to mean an accident or occurrence or series of accidents or occurrences arising out of one event.
- B. As to any loss covered hereunder, each loss occurrence which involves in whole or in part, the perils of tornado, windstorm, cyclone, hurricane, or hail shall include all losses wherever occurring occasioned by these perils which arise out of one atmospheric disturbance during a continuous period of seventy-two (72) hours.
- C. As to any loss covered hereunder, each loss occurrence which involves in whole or in part, the perils of riot, riot attending a strike and civil commotion, vandalism and malicious mischief, earthquake and flood, shall include all losses whenever occurring (the result of direct damage only) occasioned by these perils which arise during a continuous period of seventy-two (72) hours.

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- D. When filing its proof of loss the Insured may elect the moment from which each of the seventy two (72) hour periods, stipulated in the preceding paragraphs of this article, shall be deemed to have commenced.
- E. In the event of there being a difference of opinion between the Insured and the Company as to whether or not all tornado, windstorm, cyclone, hurricane and hail losses sustained by the Insured during an elected period of seventy-two (72) hours arose out of or were caused by a single atmospheric disturbance, the stated opinion of the United States Weather Bureau shall govern as to whether or not a single atmospheric disturbance had continued at the locations involved beyond the elected period of seventy-two (72) hours all loss sustained during such extended period shall be included as a single loss occurrence.

Should any elected period of seventy-two (72) hours, as referred to in paragraphs B, C, D and E, of this article, extend beyond the expiration date of this agreement, and commence prior to expiration, the Company will, nevertheless, pay all losses occurring during such elected period as if such period fell entirely within the currency of this agreement.

**12. LOSS REPORTING**

The Named Insured agrees to report to the Company immediately, upon knowledge thereof, any incident which in the opinion of the Insured may result in a loss of the kind insured hereunder in excess of its deductible. It is agreed for the purposes of this clause that knowledge and opinion of the Named Insured shall be interpreted as the knowledge and opinion of the State Risk Manager and/or the School District business official responsible for risk management.

**13. NOTICE AND PROOF OF LOSS**

A detailed sworn proof of loss shall be filed with the Company as soon as practicable after the loss becomes known to the School District business official responsible for risk management.

Upon the Company's request, the Insured shall exhibit the damaged property to the Company, and submit to examination under oath by anyone designated by the Company, subscribe the same and produce for the Company's examination all pertinent records and sales invoices, certified copies if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the Company shall designate.

**14. NAMED INSURED'S LEGAL ADDRESS AND LEGAL REPRESENTATIVE  
FOR REPORTING CLAIMS, FILING OF PROOF OF LOSS:**

Fred A. Moreton & Company  
P. O. Box 58139  
Salt Lake City, UT 84158-0139

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**15. SALVAGE AND RECOVERY**

All salvages, recoveries and payments recovered or received subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto.

**16. CANCELLATION**

This policy may be canceled by the Named Insured by surrender thereof to the Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This policy may be canceled by the Company by mailing to the Named Insured at the mailing address shown in this policy at last known address, written notice, with or without tender of the excess of paid premium above the pro rata earned premium for the expired time, stating when, not less than 90 (ninety) days thereafter (10 days for nonpayment of premium) such cancellation shall be effective.

Proof of mailing of notice as aforesaid shall be sufficient proof of notice. If the Named Insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premiums shall be computed pro rata. Premium adjustment shall be made as soon as practicable after cancellation becomes effective.

**17. NON-RENEWAL**

It is further agreed that in the event of non-renewal or rate increase, the Company will give not less than sixty (60) days written notice to the State of Utah Risk Manager.

**18. COMPANY CHANGES**

If the Company makes or proposes to make any change in this policy, or in its operations, or in its services which would significantly affect this policy or its ability to perform under the terms of this policy or its ability to perform under the terms of the "request for quotation" forming a part hereof, then the Company will give sixty (60) day prior written notice of such change. If prior notice is not given or the Company makes changes as outlined above, then the Named Insured may cancel this policy and receive a refund of premium on a pro rata basis from the date such change takes effect.

**19. TIME FOR COMMENCEMENT OF SUIT**

It is agreed that the twelve-month period within which suit must be brought under the terms of this policy shall commence at the time that proof of loss is rendered to the Company or, if proof of loss is not rendered, at the latest date (provided by this policy, by statute, or by agreement or extension of time granted by the Company) on which proof of loss is required to be rendered. In the event that either the Insured or the Company makes a written demand for any appraisal, then said twelve-month period

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shall commence with the date of receipt by the Insured or written acknowledgement by the Company of the filing with it of the award of the appraisers.

In the event that liability is denied by the Company, then said twelve-month period shall commence with the date of receipt by the Insured of written denial of liability.

**20. VALUE REPORTING**

The Named Insured agrees to submit a declaration of replacement cost values insured hereunder at inception and (90) days prior to each anniversary.

It is understood and agreed that all changes in values between anniversary dates due to inadvertent failure to report, new acquisitions, sales, or disposal of property or for any other reason need not be reported until (90) days prior to the next anniversary date except that any acquisition or course of construction valued in excess of \$50,000,000 must be reported within (90) days. The State Risk Manager will make a good faith effort to ensure that all values are reported at each anniversary date, and that they are stated at full replacement cost value.

**21. ANNUAL ADJUSTMENT**

It is understood that the premium shown on the Declaration page and elsewhere herein is an annual deposit and is calculated on the basis of the value of the property insured as reported to the Company. It is a condition of this policy that the Insured maintains an accurate record of the value of the property insured and that he submits a statement to the Company at the end of each annual period showing the average value of the property insured over the preceding twelve months.

If the values thus reported differ from the original reported values, then the annual premium applicable hereon for the annual period thus reported shall increase or decrease in the same ratio that such values differ.

If the annual premium be increased, as aforesaid, the Insured shall pay the appropriate additional premium; if decreased, the Company shall grant the appropriate return premium to the Insured, it being mutually agreed to waive the payment of additional premium or return premium if the difference in value is less than 5%.

All other terms and conditions of this policy remain unchanged.

**22. PREMIUM PAYMENTS**

Premium is due and payable on the anniversary date at the following location:

Fred A. Moreton & Company  
P. O. Box 58139  
Salt Lake City, UT 84158-0139

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**23. CONFLICT OF WORDING**

The conditions contained in this form shall supersede those of the basic policy to which this form is attached wherever the same may conflict, except that Axis Surplus Insurance Company endorsements to the policy shall supersede this clause.

**24. INCONTESTABILITY / ERRORS AND OMISSIONS**

This policy will be incontestable from date of attachment as to written or oral statements or representations made by the Insured concerning building or contents values, incorrect description of interest or risk, prior loss history, or as to any other statement or representation related to this policy, provided notice is given to the Company immediately upon discovery, by the Insured's Risk Manager of any such error or omission

**25. COINSURANCE WAIVER**

Any provision in this policy related to the application of a coinsurance or contribution clause is waived.

**26. EXCLUSION CLAUSES**

It is understood and agreed that the following items are specifically excluded from coverage under this policy.

**A. GENERAL EXCLUSIONS:**

- (1) Land and land values. However, this exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements shall include, but not be limited to, landscaping, earthen dikes, pavements, quarries, and lawns. Roads, streets and highway are not considered land improvements.
- (2) Growing Crops
- (3) Current value of construction financing costs.
- (4) Railroad rolling stock involved in any Class A railroad operation. This shall not apply to the Insured's interest in Heber Valley Railroad.

**B. GENERAL STRUCTURAL EXCLUSIONS**

Exclusions 2 through 4, 8 through 14 and 21 do not apply to loss from the perils of earthquake and flood.

- (1) Excavations, grading and filling;

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- (2) Concrete or masonry foundations, including foundations of machinery, boilers and engines which are below the undersurface of the lower basement floor, or where no
- (3) Basement, which are below the surface of the ground inside walls of the building;
- (4) Piling, when no part of the piling is exposed above ground or above water.
- (5) Concrete, masonry and earthen bulkheads, dikes and retaining walls, all outside of and not forming a part of a building; This exclusion shall not apply to stadiums or seating structures.
- (6) Gateposts, garden and yard walls of concrete or masonry construction when not attached to buildings;
- (7) Exterior paving, curbing, culverts, roadways and driveways;
- (8) Bridges, approaches, causeways, subways, culverts, trestles, viaducts and other highway and roadway construction (but not bridges nor subways attached to and communicating with any building, which are covered hereunder);
- (9) Sidewalks (but not sidewalks under which basements extend), and which are covered hereunder;
- (10) Underground pipes, sewerage, flues, drains, conduits and wiring;
- (11) Underground tanks and contents therein, underground reservoirs and contents therein and cesspools;
- (12) Wells and well equipment below the surface of the ground;
- (13) Rearing ponds at fish hatcheries;
- (14) Exterior flumes, pools, ponds, sluices, canals, waterways and dams;
- (15) Outdoor swimming pools (but not pump houses, dressing rooms, seating and other auxiliary structures, which are covered hereunder);
- (16) Fences (except those portions of wood or metal fences which are within 50 feet of a building, which are covered hereunder);
- (17) Roadway barricades, power poles, parking meters, lamp standards, traffic and fire alarm systems, street signs and standards of all kinds, all in streets and in the open and not attached to buildings; however this exclusion shall not apply to computerized freeway automatic traffic control signs.

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- (18) Those portions of surface transmission, signal and telephone lines outside of and over 50 feet from any building with which they are connected;
- (19) Exterior garden decorations, pergolas, fireplaces, barbecue pits and incinerators, all while outside of and not attached to buildings (but pump room structure and its contents attached to the fountain in the playground at the State Training School near American Fork, which are covered hereunder);
- (20) Water distribution reservoirs and dams, outside water mains and fire hydrants which are part of the operating water systems;
- (21) Railway tracks and ties and other railway construction outside of buildings;
- (22) Sumps, cisterns, water tanks of masonry, concrete or steel on the ground, outside of buildings;
- (23) Sewage disposal plant aeration tanks, agitator tanks, settling tanks, sludge beds, clarifier tanks and other open sewage containers of concrete construction and equipment contained in such structures all outside of buildings.
- (24) Goals, goal posts, standards, and recreational, athletic and playground equipment outside of buildings.

C. GENERAL PERSONAL PROPERTY EXCLUSIONS

- (1) Aircraft
- (2) Benches, chairs, tables, refuse containers, all while outside of buildings in yards or parks;
- (3) Sand, gravel, earth, dismantled machinery, scrap iron, ore, metal and concrete pipe and tile and uninstalled hydrants, all while outside of buildings;
- (4) Wild or game animals, and all other animals except those held for sale, amusement, educational or experimental purposes;
- (5) Automobiles.

D. EXCLUSIONS - BUILDER'S RISK

With respect to any building, structure, project, improvement or portion thereof in the course of construction, alteration or repair the clauses entitled: perils excluded, general structural exclusions, general personal property exclusions and specific exclusions, but not general exclusions, are waived and replaced by the following:

- A. Penalties for non-completion of or delay in completion of contract or non-compliance with contract conditions;



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- B. Cost of making good faulty or defective workmanship, material, construction or design, but this exclusion shall not apply to damage resulting from such faulty or defective workmanship, material, construction or design;
- C. Wear, tear, normal upkeep, inherent vice, latent defect, vermin or normal making good;
- D. Loss or damage directly or indirectly occasioned by happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
- E. Loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused; nevertheless if a fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination any loss or damage arising directly from that fire shall (subject to the provision of this policy) be covered, excluding however all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that fire;
- F. Loss or damage caused by frost or freezing unless resulting from damage occasioned by fire and/or lighting and/or explosion and/or windstorm and/or hail and/or riot and/or riot attending a strike and/or civil commotion and/or aircraft and/or vehicles and/or smoke;
- G. Loss or damage to automobiles or aircraft; with the exception of aircraft (rotors or propellers not in motion) used for mechanics training courses at State institutions of higher learning.
- H. Loss due to disappearance or revealed by inventory shortage alone;
- I. Mechanical breakdown, but this exclusion shall not be deemed to exclude loss or damage arising as a consequence of mechanical breakdown;
- J. Infidelity of the Insured's employees;
- K. Contractor's equipment of every description;
- L. Water distribution reservoirs and dams, outside water mains and fire hydrants which are part of the operating water systems;
- M. Railway tracks and ties and other railway construction outside of buildings;
- N. Bridges, approaches, causeways, subways, culverts, trestles, viaducts and other highway and roadway construction (but not bridges nor subways

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attached to and communicating with any building, which are covered hereunder).

**27. PERSONAL PROPERTY**

It is understood and agreed that, at the option of the Named Insured, this policy shall extend to cover personal property of the nature covered by this policy, belonging to members of the governing body of the Named Insured, members of its boards or commissions, elected or appointed officials, employees or authorized volunteers of the Named Insured, or students at any of Named Insured's educational institutions, while located on premises owned, leased or occupied by said Named Insured, but loss, if any, on such personal property shall be adjusted with and made payable to the School District business official responsible for risk management.

**28. OTHER INSURANCE**

If at the time of loss there is other insurance, the Company shall not be liable for any loss hereunder until:

- A. The liability of such other insurance has been exhausted, and
- B. Then for only such amount collectible according to the terms of this policy as may exceed the amount due from such other insurance.

If any other such insurance is also written on an excess basis, then any loss hereunder shall be settled under the Guiding Principles.

**29. SUBROGATION WAIVER**

This insurance shall not be invalidated should the Insured waive in writing before loss has occurred any or all right of recovery against any party for loss, provided, however, that in the event the Insured waives only a part of his rights against any particular party, the Company shall be subrogated with respect to all rights of recovery which the Insured may retain against any such party for loss from the perils insured against to the extent that payment therefore is made by the Company.

**30. AUTOMATIC REINSTATEMENT**

Any loss hereunder shall not reduce the amount of this policy. This clause does not apply to the perils of Earthquake or Flood.

**31. EXTENSIONS OF COVERAGE**

- A. Alterations and New Buildings:

Permission granted to make alterations in or to construct additions to any building described herein and to construct new buildings on the described premises. This policy is extended to cover, subject to all its provisions, loss of earnings or extra expense resulting from damage to or destruction of such alterations, additions on

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new buildings while in course of construction and when completed or occupied, provided that, in the event of damage to or destruction of such property (including building materials, supplies, machinery or equipment incident to such construction or occupancy while on the described premises or within 100 feet thereof) so as to delay commencement of business operations of the Insured, the length of time for which the Company shall be liable shall be determined as otherwise provided herein but such determined length of time shall be applied and the loss hereunder calculated from the date that business operations would have begun had no damage or destruction occurred.

B. Business Interruption

- (1) Loss of Earnings, including Tuition Fees, resulting from the necessary interruption of business conducted by the Insured including all interdependencies between or among companies owned or operated by the Insured caused by loss, damage, or destruction by the perils insured herein during the term of this policy to real and/or personal property.
- (2) If such loss occurs during the term of this policy, it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED by the Insured consisting of the net profit which is prevented from being earned including ordinary payroll and payroll; and all charges and other expenses, except as outlined in Section 31., C. below, to the extent that these must necessarily continue during the interruption of business, but only to the extent to which such charges and expenses would have been incurred had no loss occurred.
- (3) In determining the amount of net profit, charges, and expenses covered hereunder for the purposes of ascertaining the amount of actual loss sustained, due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.
- (4) In the event of loss or damage to or destruction of property caused by any of the perils covered herein which results in an interruption of research and development activities, which in themselves would not have produced income during the recovery period, this policy shall cover the actual loss sustained of the continuing fixed charges and expenses, including ordinary payroll, and payroll directly attributable to such research and development activities.
- (5) For purpose of this coverage, "Tuition Fees" are defined as the sum of tuition, fees and other income from students, less the cost of merchandise sold and materials and supplies consumed in services sold to such students. In determining Tuition Fees due consideration shall be given to the experience of the Insured before the date of damage or destruction and the probable experience thereafter had no loss occurred.
- (6) The company shall not be liable for any increase of loss of earnings, tuition fees, nor for any extra expense resulting from interference at the described premises, by strikers or other persons, with rebuilding, repairing or replacing

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the property or with the resumption or continuation of business; nor shall the Company be liable for any other consequential or remote loss.

C. Extra Expense

- (1) Extra Expense incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following loss, damage or destruction by the perils insured herein during the term of this policy to Real and/or Personal Property.
- (2) The term Extra Expense, as used herein, is defined as the excess (if any) of the total cost incurred during the recovery period chargeable to the operation of the Insured's business, over and above the total cost that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred.

D. Accounts Receivables

In the event of loss, damage or destruction to records or accounts receivable from customers by the perils insured herein, the Insurer will indemnify the Insured as follows:

- (1) All sums due the Insured, provided the Insured is unable to effect collection thereof as a result of loss or damage to records of accounts receivable by a peril insured by this policy.
- (2) Collection expense in excess of normal collection and made necessary because of such loss or damage.
- (3) Other expenses, when reasonable incurred by the Insured in reestablishing records of accounts receivables following such loss or damage.

For purpose of this insurance, credit card company charge media shall be deemed to represent sums due the Insured from customers.

When there is proof that a loss of records of accounts receivable has occurred by the Insured and Insured cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

- (1) The monthly average of accounts receivable during the last available Twelve (12) months, together with collection expenses in excess of normal collection costs and made necessary because of such loss or damage and reasonable expenses incurred in reestablishing records of accounts receivable following such loss or damage, shall be adjusted in accordance with the percentage increased or decreased in the Twelve (12) months average of monthly gross revenues which may have occurred in the interim;

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- (2) The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration also being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved. There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records, not lost or damaged, or otherwise established or collected by the Insured and an amount to allow for probable bad debts which would normally have been uncollectible by the Insured.

E. Leasehold Interest

In the event of loss, damage, or destruction caused by the perils insured herein during the term of this policy and not otherwise excluded, to real property which is leased by the Insured, this policy is extended to cover as follows:

- (1) If as a result of such loss or damage the property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent, this Insurer shall indemnify the Insured for the actual rent payable for the unexpired term of the lease; or
- (2) If as a result of such loss or damage the property becomes partially untenable or unusable and the lease agreement requires continuation of the rent, this company shall indemnify the Insured for the proportion of the rent applicable thereto; or
- (3) If as a result of such loss or damage the lease is cancelled by the lessor pursuant to the lease agreement or by operation of law, this Insurer shall indemnify the Insured for its Lease Interest for the first three months following the loss or damage and for its Net Lease Interest for the remaining unexpired term of the lease; provided however, that this company shall not be liable for any increase in the amount recoverable hereunder resulting from the suspension, lapse or cancellation of any license, or from the Insured exercising an option to cancel the lease; or from any act or omission of the Insured which constitutes a default under the lease; and provided further that the Insured shall use any suitable property or service owned or controlled by the Insured or obtainable from another source to reduce the loss hereunder.

F. Rental Value and Rental Income

Loss of Rental Income and/or Loss of Rental Value of the Insured caused by loss, damage or destruction by the perils insured herein during the term of this policy to property and/or premises rented/or occupied by the Insured and/or rented or leased by the Insured to others.

- (1) Rental Income shall include the following:
  - (a) The total anticipated gross rental income from tenant(s) which would otherwise be obligations of the Insured, plus

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- (b) The amount of all charges assumed by tenant(s) which would otherwise be obligations of the Insured, plus
- (c) A similar value for that portion occupied by the Insured:
- (d) Rental Value shall include the following:

This policy will serve as Rental Income Insurance in those situations where the Insured is required under a lease or rental agreement to maintain such insurance on behalf of any landlord.

This policy will respond for rental expenses incurred by the Insured in excess of the expenses which would have been incurred had a leased or rented premises not been damaged or destroyed by any peril covered under this policy. Such coverage will apply for all additional expenses incurred during the period of unavailability of the lease cannot be terminated until its expiration.

G. Royalties

- (1) Loss of income to the Insured under royalty, licensing fees, or commission agreements between the Insured and another party which is not realizable due to loss, damage or destruction by any of the perils not excluded in this policy.
- (2) If such loss occurs during the term of this policy, it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED of such income referred to in paragraph 1 above, which would have been earned had no loss occurred.
- (3) Resumption of Operations: The Insured shall influence, to the extent possible, the party with whom the agreement described in paragraph 1 above has been made to use any other machinery, supplies or locations in order to resume business so as to reduce the amount of loss hereunder and the Insured shall cooperate with that party in every way to effect this, but not financially, unless such expenditures shall be authorized by the Insurer.
- (4) Experience of the Business: In determining the amount of income derived from the agreement(s) described in paragraph 1 above for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the amount of income derived from such agreement(s) before the date of damage or destruction and to the probable amount of income thereafter had no loss occurred.

H. Transit

- (1) This policy attaches and covers shipments within and between the territorial limits of this policy, including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment, including during deviation and delay, until safely delivered and accepted at place of final destination. No coverage is provided under this policy for import and/or

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incoming intercoastal water shipments until after discharge from ocean going vessels and until after the risk assumed under any Ocean Marine cargo policy has commenced whichever occurs first, export and/or outgoing intercoastal water shipments after placed on board ocean going vessels or after the risk assumed under any Ocean Marine cargo policy has commenced whichever occurs first.

- (2) This insurance is extended to cover loss or damage to property in transit (including time element coverages) that the Insured has an insurable and/or financial interest in and this is not otherwise excluded in this policy, including, but not limited to, the following:
- (a) sold and shipped by the Insured under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;
  - (b) arising out of any unauthorized person(s) representing themselves to be the proper party(ies) to receive goods for shipment or to accept goods for delivery;
  - (c) occasioned by the acceptance by the Insured, by its agents, or by its customers of fraudulent bills of lading, shipping and delivery orders, or similar documents;
  - (d) at the Insured's option, which is incoming to the Insured.
- (3) (a) The Insured may waive right(s) of recovery against private, contract, and common carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting or releasing their liability, but this transit insurance shall not inure to the benefit of any carrier, bailee, warehouseman, or processor.
- (b) With respect to shipments described under subparagraphs 2a and 2d above, the Insurer agrees to waive its rights or subrogation against shippers and consignees at the option of the Insured.
- (4) The Insured is not to be prejudiced by any agreements exempting lightermen from liability.
- (5) Seaworthiness of any vessel or watercraft and airworthiness of any aircraft are admitted between the Insurer and the Insured.

Insurer will pay the actual loss of business income/extra expense the insured sustains during the period of restoration because of the necessary suspension of the insured's operations due to a covered cause of loss to the property of the insured's customers, vendors and suppliers or downstream suppliers which results in a suspension in their ability to supply or accept good and/or materials, supplies or services.

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This policy, subject to all its provisions and without increasing the amount of said policy limits, also insures against loss, damage or destruction by the perils insured against, of:

- (1) Contingent Business Interruption/Contingent Extra Expense: Property that directly or indirectly prevents a supplier (including suppliers of any tier) of goods and/or services to the Insured from rendering their goods and/or services, or property that prevents customers (including customers of customers) of goods and/or services from the Insured from accepting the Insured's goods and/or services. Coverage hereunder also includes real and personal property located at Attraction Properties.
- (2) Service Interruption/Off Premises Power: All incoming services to the Insured, whether or not owned by the Insured, including, but not limited to, any electrical equipment and systems, fuel, water, gas, feedstock, pulp, liquid gases, sewage, steam, telephone, telecommunications, heating, refrigeration and/or air conditioning systems, or their respective transmission lines or utility plants, situated on or outside of the premises, when used for the incoming service of the Insured. This coverage is extended to include loss or damage resulting from any accidental occurrence to the property owned under this clause.
- (3) Impounded Water: Dams, reservoirs or equipment connected therewith when water used as a raw material or used for power or for other manufacturing purpose stored behind such dams or reservoirs is released from storage and causes an interruption of business caused by lack of adequate water supply from such sources.
- (4) Consequential/Sequential Damage: Consequential/sequential loss or damage caused by or resulting from the change of temperature or humidity or by interruption of power, heat, light, air conditioning, refrigeration, telephone or telegraphs, supply water or telecommunications resulting from damage by the perils insured against hereunder to property/equipment or plants used to provide refrigeration, cooling, humidifying, dehumidifying, air conditioning, heating generating, converting power, or telephone or telegraph, or telecommunications including all connections and supply from transmission lines and pipes, power generating equipment, utility plants, or sources, whether or not such equipment is on or off the premises of the Insured.
- (5) Civil/Military Authority: Actual loss as insured herein during the period of time when, as a result of a peril insured against access to real or personal property that is within 5 miles of Insured's premises and is prohibited by order of civil authority for a period not exceeding 30 days.
- (6) Ingress/Egress: Loss sustained during the period of time when, as a result of a peril insured against, ingress to or egress from real or personal property that is within 5 miles of Insured's premises and is prevented or hindered, irrespective of whether property of the Insured sustained damage for a period not exceeding 30 days.



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- (7) Outgoing Effluence: This policy is extended to cover the actual loss sustained because of inability of any location herein insured to directly discharge its outgoing effluence to a public waste treatment plant due to damage to or destruction of that public waste treatment plant.
- (8) Soft Costs: In the event of loss or damage insured against under this policy resulting in delay of completion of a construction project, this policy provides coverage for those expenses relating to such project over and above those costs which would have been incurred, including, but not limited to, interest payments on financing under a loan agreement and real estate taxes accruing during the period of delay.
- (9) Loss Provisions Applicable to Clauses A, B, C, D and E (and the further extensions thereto):

A. Period of Recovery

The length of time for which loss may be claimed is referred to as the recovery period and is defined as follows:

- (1) shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this policy.
- (2) shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace such part of the property which has been destroyed or damaged; and
- (3) such additional length of time to restore the Insured's business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
  - (a) the date on which the liability of the company for loss or damage would otherwise terminate; or
  - (b) the date on which repair, replacement or rebuilding of such part of the property as has been damaged is actually completed and the Insured has resumed normal operations.

But in no event for more than two years thereafter from said later commencement date;

with respect to alterations, additions, or property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the level of production or level of business operations that would reasonably have been achieved after construction and start up would have been completed had no physical damage occurred.

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B. If the Insured can reduce the loss resulting from the interruption of business:

- (1) by a complete or partial resumption of operations of the property insured, where damaged or not; or
- (2) by making use of stock, merchandise, or other property;
- (3) such reduction shall be taken into account in arriving at the amount of loss hereunder.

C. Expense to Reduce Loss

This policy also covers such expenses as are necessarily incurred for the purpose of reducing any loss under this policy, even though such expenses may exceed the amount by which the loss under this policy is thereby reduced.

D. In determining the amount of loss insured hereunder due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

E. In determining the amount of loss insured hereunder due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

F. Special Exclusions:

This section of the policy does not insure against any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease, license, contract, or order; nor for any increase of loss due to interference at the Insured's premises by strikers or other persons with rebuilding, repairing, or replacing the property damaged or destroyed, or with the resumption or continuation of business, or with the re-occupancy of the premises.

### 32. MISCELLANEOUS DEFINITIONS

- (1) "Valuable Papers and Records" means written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, but does not mean money or securities.
- (2) "Money" means currency, coins, bank notes, bullion, traveler's checks, registered checks and money orders held for sale to the public.
- (3) "Securities" means all negotiable and non-negotiable instruments or contracts representing either money or other property and includes revenue, food stamps and other stamps in current use, tokens and tickets, but does not include money.

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**33. PERMISSION AND PRIVILEGES**

Permission granted: (1) for such use of the premises as is usual and incidental to the business conducted therein and for existing and increased hazards and for change in use or occupancy; (2) to keep and use all articles and materials, usual and incidental to said business, in such quantities as the exigencies of the business require; (3) for the building(s) to be in course of construction, alteration or repair, all without limit of time but without extending the term of this policy, and to build additions thereto; (4) for buildings to be vacant or unoccupied; (5) for changes in protective safeguards such as sprinklers and alarm systems irrespective of notice given to the Company. This insurance shall not be prejudiced: (1) by any act or neglect of the owner of the building(s) or by any act or neglect of any occupant of the building(s); nor (2) shall this insurance be prejudiced by any error in stating the name, number, street or location of any building(s) and contents covered hereunder; (3) if the Insured is not the sole and unconditional owner of the property insured hereunder; (4) if the property insured hereunder be or become encumbered by mortgage, chattel mortgage, trust and/or bonded indebtedness; (5) if foreclosure proceedings be commenced or notice of sale given of any property covered by this policy.

**34. DEBRIS REMOVAL**

We will pay the expense of removal from the Premises described in the Schedule of Locations of debris remaining as a result of physical loss insured against under this Policy when the Insured gives written notice of Loss to the Company as soon as practicable but not more than 180 days after the Loss. There is no coverage for the expense of removing contaminated property nor the contaminant therein or thereon, whether or not the contamination results from an Occurrence. Contaminant includes, but is not limited to Pollutants.

The Company's total liability for debris removal for each insured location sustaining physical Loss payable in any one Occurrence shall not exceed the greater of:

- (1) 25% of the amount of physical Loss and time element Loss payable at that location, or
- (2) The Limit of Insurance shown in the Commercial Property Coverage Declarations Page except that the provisions of this Clause shall not increase any other amounts of insurance or limits of liability provided elsewhere in this Policy.

**35. POLLUTANT CLEAN UP AND REMOVAL**

We will pay your expense to extract Pollutants from Land or water at Premises described in the Schedule of Locations if the discharge, dispersal, seepage, migration, release or escape of the Pollutants occurs from Loss to Covered property and results from a peril covered by this policy, but only when such Loss to Covered Property first occurred during the Policy Period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of the Occurrence.

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This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of Pollutants. But we will pay for testing which is performed in the course of extracting the Pollutants for the Land or water.

"Pollutants" as used in this Policy shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**36. ASBESTOS EXCLUSIONS**

This policy does not cover:

- A. Asbestos, dioxin or polychlorinated biphenols (hereinafter all referred to as "Materials") removal from any good, product or structure unless the asbestos is itself damaged by a peril covered by this policy.
- B. Demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating such Materials;
- C. Any governmental direction or request declaring that such Materials present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

The coverage afforded does not apply to payment for the investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or suit related to any of the above.

**37. AUTHORITIES EXCLUSION**

Notwithstanding any of the provisions of this policy, the Company shall not be liable for loss, damage, costs, expenses, fines or penalties incurred or sustained by or imposed on the insured at the order of any Government Agency, Court or other Authority arising from any cause whatsoever.

**38. INSURANCE AGREEMENT POLICY PERIOD AND PREMIUM:**

In consideration of the Policy Period and the Annual Premium shown on the Declarations Page, this Agreement attaches and insures from the dates beginning and ending at 12:01 a.m. at the location of property involved.

If the Policy Period of this Agreement is longer than one year, for each subsequent year of coverage, premium will be due at the anniversary and will be subject to rules and rates in effect at that time.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PARTICIPATION CLAUSE

This policy insures for a forty percent (40%) interest in this insurance. In the event of loss or damage insured by this policy, this Insurer shall be liable for no more than forty percent (40%) percent of the Limits of Liability set forth in the LIMIT OF LIABILITY ENDORSEMENT.

<b>Named Insured</b> State of Utah, etal		<b>Endorsement Number</b> A
<b>Policy Number</b> EAF700304-07	<b>Policy Period</b> 07/01/2007 TO 07/01/2008	<b>Effective Date of Endorsement</b> 07/01/2007
<b>Issued by</b> AXIS Surplus Insurance Company		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**MINIMUM EARNED PREMIUM CLAUSE – PERCENTAGE**

In the event of cancellation of this policy by the Insured, a minimum earned premium of 35% of the original policy premium shall become earned; any conditions of the policy to the contrary notwithstanding.

Failure of the Insured to make timely payment of premium shall be considered a request by the Insured for the Company to cancel. In the event if such cancellation by the Company for non-payment of premium, the minimum earned premium shall be due and payable; provided, however, such non-payment cancellation shall be rescinded if the Insured remits the full premium due within 10 days of receiving it.

In the event of any other cancellation by the Company, the earned premium shall be computed pro-rata, not subject to the minimum premium.

Named Insured State of Utah, etal		Endorsement Number B
Policy Number EAF700304-07	Policy Period 07/01/2007 TO 07/01/2008	Effective Date of Endorsement 07/01/2007
Issued by AXIS Surplus Insurance Company		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL PROPERTY EXCLUSION ENDORSEMENT**

### **1. EXCLUSIONS**

#### **A. Pollutants and Contaminants Exclusion**

(1) As used in this endorsement, Pollutants or Contaminants means:

- a. Any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- b. Pollutants or contaminants include, but are not limited to those materials that can cause or threaten damage to human health or human welfare or cause or threaten damage, deterioration, loss of value, marketability or loss of use to property. Pollutants or contaminants include, but are not limited to bacteria, fungi, mold, mildew, virus or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency or any other governing authority.

(2) This policy does not cover any of the following.

- a. Loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of pollutants or contaminants, however caused;
- b. The expense or cost to extract or remove pollutants or contaminants from debris;
- c. The expense or cost to extract or remove pollutants or contaminants from land or water;
- d. The expense or cost to extract or remove, restore or replace contaminated or polluted land or water;

- e. The costs associated with the enforcement or any ordinance or law which requires the Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of pollutants or contaminants;
- f. Any cost to transport any property or debris to a site for storage or decontamination required because the property is infected by pollutants or contaminants, whether or not such removal, transport or decontamination is required by law, regulation or any authority governing such matters;
- g. Any cost to store or otherwise dispose of any property because pollutants or contaminants infect the property; or
- h. Any expense for the investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or suit related to any of the above.

**(3) Additional Coverage**

This policy is extended to cover the necessary and reasonable expenses actually incurred by the insured to clean up or remove pollutants from land or water at Covered Locations under this policy during the policy period if the discharge, dispersal, seepage, migration, release or escape of the pollutants is directly caused by or results directly from fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective system. The most the Company will pay for such pollutant clean up or removal is a \$10,000 aggregate in any one policy year. The expenses will be paid only if they are reported to the Company in writing within 180 days of the date on which the covered loss occurs. This additional coverage does not increase the Policy Limit of Insurance.

**B. Asbestos, Dioxin or Polychlorinated Biphenols Materials Exclusion**

- (1) In this exclusion, Asbestos, Dioxin, and Polychlorinated Biphenols are all referred to as "Materials."
- (2) This policy does not cover loss or damage caused directly or indirectly by any of the following.
  - a. Removal of such "Materials" from any goods, products, structures or debris;
  - b. Demolition, increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating such "Materials";
  - c. Any governmental direction or request declaring that such "Materials" present in or part of or utilized in any undamaged portion of the Insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified; or



- d. Any expense for the investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or suit related to any of the above.

**(3) Additional Coverage**

This policy is extended to cover the necessary and reasonable expenses actually incurred by the Insured to remove Asbestos at Covered Locations under this policy during the policy period if Asbestos itself is directly damaged by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective system. The most the Company will pay for such Asbestos removal is a \$10,000 aggregate in any one policy year. The expenses will be paid only if they are reported to the Company in writing within 180 days of the date on which the covered loss occurs. This additional coverage does not increase the Policy Limit of Insurance.

**C. Nuclear Exclusion Clause**

- (1) The Company shall not be liable for loss or damage by nuclear reaction, nuclear radiation or radioactive contamination, however caused.
- (2) This policy will not cover any cost or expense to defend any claim or suit or pay any damages, loss or expense or obligation, resulting from nuclear reaction, nuclear radiation or radioactive contamination, however caused.

**D. Fines or Penalties**

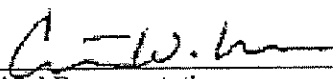
This policy will not pay any costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any government agency, court or other authority arising from any cause whatsoever.

**2. Other Insurance Contracts**

Coverage provided by other insurance contract(s) for any exclusion in this endorsement shall not affect the terms and conditions as set forth by this endorsement. This policy shall not cover as excess insurance or contribute with such other insurance for loss or damage excluded by this endorsement.

The policy changes provided by this endorsement shall supersede and annul any conflicting provisions of the policy. All other matters not affected by this endorsement remain the same and shall be governed by the terms and conditions of the Company's policy to which this endorsement is attached.

All other terms and conditions remain unchanged.

  
Authorized Representative

<b>Named Insured</b> State of Utah, etal		<b>Endorsement Number</b> C
<b>Policy Number</b> EAF700304-07	<b>Policy Period</b> 07/01/2007 TO 07/01/2008	<b>Effective Date of Endorsement</b> 07/01/2007
<b>Issued by</b> AXIS Surplus Insurance Company		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **TOTAL EXCLUSION – ELECTRONIC PROPERTY AND VIRUS**

This endorsement modifies insurance provided under all Coverage Parts.

A. It is agreed the following is not Covered Property:

#### **Electronic Data**

Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive process, store, retrieve or send data.

B. It is agreed the following are not Covered Causes of Loss:

1. **Virus** – A virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation.
2. **Computer Manipulation** – Loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by any entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

C. The following item is added as an **EXCLUSION**:

#### **Cost to Replace Electronic Data**

The cost to replace or restore information which exists as electronic data.

D. The following is added to the **Business Income (and Extra Expense) Coverage Form**, if it applies:

**ADDITIONAL LIMITATION – Interruption of Computer Operations**

Coverage for Business Income does not apply when a “suspension” of “operations” is caused by destruction or corruption of electronic data, or any loss or damage to electronic data.

Coverage of Extra Expense does not apply when action is taken to avoid or minimize a “suspension” of “operations” caused by destruction or corruption of electronic data, or any loss or damage to electronic data.

<b>Named Insured</b> State of Utah, etal		<b>Endorsement Number</b> D
<b>Policy Number</b> EAF700304-07	<b>Policy Period</b> 07/01/2007 TO 07/01/2008	<b>Effective Date of Endorsement</b> 07/01/2007
<b>Issued by</b> AXIS Surplus Insurance Company		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **MOLD, FUNGI, WET OR DRY ROT AND BACTERIA EXCLUSION ENDORSEMENT**

**1. EXCLUSIONS:**

This policy does not cover:

- A. Loss or damage caused directly or indirectly by mold or other fungi, wet or dry rot, or bacteria.
- B. The costs associated with the enforcement of any ordinance or law which requires the Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of mold or other fungi, wet or dry rot, or bacteria.
- C. Any costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any government agency, court or other authority arising from any cause whatsoever.

This mold or other fungi, wet or dry rot, or bacteria exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

**2. LIMITED COVERAGE FOR MOLD, FUNGI, WET OR DRY ROT AND BACTERIA**

This policy is extended to cover, subject to a maximum total limit of \$10,000 per occurrence, loss or damage directly caused by or resulting from mold or other fungi, wet or dry rot, or bacteria if such mold or other fungi, wet or dry rot, or bacteria is directly caused by or results from one or more of the following causes that occurs during the policy period:

- Fire;
- Lightning;
- Explosion;
- Windstorm;
- Hail;
- Smoke;
- Vehicles;
- Aircraft;
- Civil disturbance;
- Riot;
- Vandalism;
- Sprinkler leakage;
- Leakage from fire extinguishing equipment;
- Sinkhole collapse;
- Volcanic action;
- Falling objects;
- Weight of snow, ice or sleet;

- Water damage; or
- Collision, or upset or overturn of a transporting vehicle:
  - (1) at locations occupied by the Insured; or
  - (2) away from the locations occupied by the Insured when the transporting vehicle is owned, operated, rented, leased or borrowed by the Insured.

If this policy includes coverage for flood, earthquake or earth movement it will be considered a covered peril for mold or other fungi, wet or dry rot, or bacteria.

As applied to this limited coverage for loss or damage by mold, fungi, wet or dry rot, and bacteria, "loss or damage" means:

- a. Direct physical loss or damages to Covered Property by mold, fungus, wet or dry rot or bacteria, including the cost of removal of the mold, fungus, wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the mold, fungus, wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is reason to believe that mold, fungus, wet or dry rot or bacteria are present.

The maximum total limit provided by this coverage extension is \$10,000 per occurrence regardless of the number or type of coverages that may apply, the number of locations to which this coverage extension applies, or regardless of the number or type of mold or other fungi, wet or dry rot, or bacteria that caused the loss or damage. When this agreement and any other insuring agreement or endorsement written by the Company applies to the same mold or other fungi, wet or dry rot, or bacteria loss, \$10,000 is the most the Company will pay on a combined total basis for all such loss. This amount is not in addition to the limits of coverage for real or personal property, flood, earthquake or earth movement or time element coverage as specified elsewhere in this policy.

### 3. DEFINITIONS

- A. Mold or other fungi means:
  - (1) any type or form of mold or mildew;
  - (2) any other type or form of fungus; or
  - (3) any mycotoxin, spore, scent or byproduct that is produced or released by such mold, mildew or other fungus.
- B. Bacteria means:
  - (1) any type or form of bacterium; or
  - (2) any byproduct that is produced or released by such bacterium.

All other terms and conditions remain unchanged.

  
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 Authorized Representative

## NUCLEAR, CHEMICAL AND BIOLOGICAL EXCLUSION ENDORSEMENT

<b>Named Insured</b> State of Utah, etal		<b>Endorsement Number</b> E
<b>Policy Number</b> EAF700304-07	<b>Policy Period</b> 07/01/2007 TO 07/01/2008	<b>Effective Date of Endorsement</b> 07/01/2007
<b>Issued by</b> AXIS Surplus Insurance Company		

**THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.**

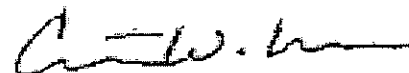
**This endorsement modifies insurance provided under the following:**

**INCLUDE APPLICABLE COVERAGE PARTS**

The following exclusions are added to your Policy or Coverage Part.

This insurance does not apply to:

- A. Loss or damage arising directly or indirectly from nuclear detonation, reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this Policy or Coverage Part, however such nuclear detonation, reaction, nuclear radiation or radioactive contamination may have been caused. This exclusion replaces any other nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination exclusions found elsewhere in this Policy.
- B. Loss or damage arising directly or indirectly from the dispersal, application or release of, or exposure to, chemical or biological materials or agents that are harmful to property or human health, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this Policy or Coverage Part, however such dispersal, application, release or exposure may have been caused.
- C. This exclusion applies to all coverage under Policy notwithstanding any coverage extension or any other endorsement.



Authorized Representative

## EXCLUSION OF TERRORISM WITH COVERAGE FOR CERTIFIED ACTS ENDORSEMENT

Name Insured State of Utah, etal			Endorsement Number F
Policy Symbol EAF	Policy Number 700304-07	Policy Period 07/01/2007 TO 07/01/2008	Effective Date of Endorsement 07/01/2007
Issued by AXIS Surplus Insurance Company			

**THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.**

**A. The following exclusion is added:**

Subject to paragraph B of this endorsement, this insurance does not cover loss, damage, injury, expense, cost or legal obligation directly or indirectly resulting from or arising out of or in any way related to any:

1. "Terrorism Act"; or

2. Actions taken by or on behalf of any government or any branch or division thereof (including, without limitation, the uniformed armed forces, militia, police, state security and anti-terrorism agencies) in responding to, preventing, combating, defending or retaliating against any "Terrorism Act."

This exclusion applies regardless of any other cause or event that in any way contributes concurrently or in any sequence to the loss, damage, injury, expense, cost or legal obligation.

This exclusion applies whether or not the "Terrorism Act" was an act committed in concert with or on behalf of any organization or government.

**B. Notwithstanding paragraph A of this endorsement, this policy will provide coverage for "Insured Loss" resulting from a "Certified Terrorism Act" on the same terms and in the same amounts as loss caused by other events covered by this policy.**

Only "Insured Loss" as defined in the Terrorism Risk Insurance Act of 2002 (including any amendments thereto, the "Act") will be covered by the policy. Paragraph A still applies to any terrorism losses not qualifying as "Insured Losses" under the Act. All other terms, conditions and limits in the policy still apply. We will not pay any amounts for which we are not responsible under the terms of the Act due to

the application of any clause which results in a cap on our liability for payments for terrorism loss. Therefore, the amounts we pay to you pursuant to the Act may be reduced. Because of this, we may reserve our rights when making payments to you for "Insured Losses" and may require an undertaking from you to return to us any overpayment.

**C. As used in this endorsement:**

"Terrorism Act" means any act, preparation in respect of action or the threat of action that:

1. Involves violence or is dangerous to human life or tangible or intangible property (including electronic, communications, information or mechanical systems or infrastructure), and

2. Reasonably appears to be intended, in whole or in part, to:

- a. Intimidate or coerce a civilian population or any segment of a civilian population; or
- b. Disrupt any segment of the economy of one or more nations; or
- c. Overthrow or influence the policy or conduct of a government; or
- d. Is in retaliation for any governmental action or policy.

"Terrorism Act" shall also include any incident determined to be such by an official, department or agency that has been specifically authorized by federal statute to make such a determination.

"Terrorism Act" includes the intentional dispersal or application of pathogenic, or poisonous biological or chemical materials and shall also include any incident determined to be such by an official, department or agency that has been specifically

authorized by federal statute to make such a determination.

"Certified Terrorism Act" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an Terrorism Act pursuant to the Act.

"Insured Loss" has the meaning given by the Act; that definition controls the grant of coverage under this policy.

D. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this policy

All other terms and conditions remain unchanged.

  
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Authorized Representative



<b>Named Insured</b> State of Utah, etal		<b>Endorsement Number</b> G
<b>Policy Number</b> EAF700304-07	<b>Policy Period</b> 07/01/2007 TO 07/01/2008	<b>Effective Date of Endorsement</b> 07/01/2007
<b>Issued by</b> AXIS Surplus Insurance Company		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

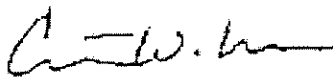
**SERVICE OF SUIT CLAUSE**

The Company hereby designates the Superintendent, Commissioner or Director of Insurance, or his/her designee, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by you or on your behalf or by any beneficiary under this Policy against the Company arising out of this Policy, provided that all lawful process received by said Superintendent, Commissioner or Director of Insurance, or his/her designee, is sent by certified or registered mail to the Company at:

AXIS U.S. Insurance  
Attention: Claims Administrator  
 11680 Great Oaks Way  
 Suite 500  
 Alpharetta, GA 30022

IN WITNESS WHEREOF, the Company has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this policy to be signed on the Declarations Page by an authorized representative of the Company.

**Axis Surplus Insurance Company**

A handwritten signature in black ink, appearing to read "Carlton W. Maner".

Carlton W. Maner  
President

A handwritten signature in black ink, appearing to read "Andrew Weissert".

Andrew Weissert  
Secretary



## CLAIM NOTICE

Please notify:

### **AXIS U.S. INSURANCE**

During business hours of 8:30 am est. to 4:30 pm est.

11680 Great Oaks Way  
Suite 500  
Alpharetta, GA 30022  
PH (678) 746-9400  
FAX (678) 746 9315

After business hours

Please contact GAB Robins at 1-800-621-5410.

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

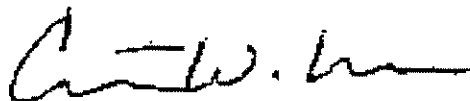
GU207  
(6-78)

### ENDORSEMENT

This endorsement, effective on July 1, 2007 at 12:01 A.M. standard time, forms a part of

Policy No. EAF700304-07 of the AXIS SURPLUS INSURANCE COMPANY

Issued to STATE OF UTAH



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Authorized Representative

In consideration of an additional premium of \$153,294 (including Terrorism), it is agreed the Total Insurable Value is amended to \$22,546,261,646.

All other terms and conditions remain unchanged.

Stamping Fee: \$383.24